

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 08-223
)
State of New Hampshire Banking) Notice of Hearing for Respondents'
)
Department,) Jean Duerr, and David Caillouette
)
and)
)
The Mortgage Specialists, Inc.,) August 29, 2008
)
Michael Gill, Lisa Tracy, Jean Duerr,)
)
and David Caillouette,)
)
Respondents')
)
)
)

NOTICE OF HEARING

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation penalties for violations of New Hampshire Banking laws should not be imposed.

Pursuant to RSA 397-A:21, the Commissioner has the authority to suspend, revoke or deny any license and to impose administrative penalties of up to \$2,500.00 for each violation of New Hampshire banking law and rules.

Pursuant to RSA 397-A:21, every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity

1 for hearing, and in addition to any other penalty provided for by law, be
2 subject to suspension, revocation, or denial of any registration or license,
3 including the forfeiture of any application fee, or the imposition of an
4 administrative fine not to exceed \$2,500, or both.

5 On July 24, 2008, the Department issued an Order to Show Cause and
6 Cease and Desist Order to The Mortgage Specialists, et al. A Consent Order
7 was signed by Respondents Michael Gill and Lisa Tracy and Respondent The
8 Mortgage Specialist, Inc. on August 18, 2008. Respondents Jean Duerr and
9 David Caillouette filed a timely request for a hearing.

10 The Department alleges the following:

11 **Issue 1: Respondents' are in violation of NH RSA 397-A:11 I, incomplete**
12 **records (20 counts);**

13 **Issue 2: Respondents' are in violation of NH RSA 397-A:6, I failure to**
14 **supervise (3 counts);**

15 **Issue 3: Respondents' are in violation of NH RSA 397-A:12 VII, failure to**
16 **facilitate exam (22 counts);**

17 **Issue 4: Respondents' are in violation of NH RSA 397-A:17 I(k), dishonest or**
18 **unethical practices (15 counts);**

19 **Issue 5: Respondents' are in violation of NH RSA 397-A:17 I(f), fraud (14**
20 **counts);**

21 **Issue 6: Respondents' are in violation of NH RSA 397-A:11 I, destruction of**
22 **records (3 counts);**

23 **Issue 7: Respondents' are in violation of NH RSA 397-A:2 III; violation of**
24 **federal statutes and regulations (2 counts), and**

25 **Issue 8: Respondents' are in violation of NH BAN Code 2504.01, failure to**
notify of balloon payments (1 count)

Accordingly, an adjudicative proceeding shall be commenced pursuant to
RSA 541-A:31 ("Availability of Adjudicative Proceeding; Contested Cases;
Notice, Hearing and Record"), and New Hampshire Code of Administrative Rules

1 BAN 200 ("Practice and Procedure"), and Chapter 800 of the Department of
2 Justice's rules (NH Code of Administrative Rules JUS 800) for the purpose of
3 permitting the Respondent to show compliance with RSA 397-A and the rules
4 adopted thereunder.

5 Each party has the right to have an attorney present to represent the
6 party at the party's expense, or each party may represent itself. Each party
7 has the right to have the Department provide a certified shorthand court
8 reporter at the requesting party's expense. Any such request must be
9 submitted in writing to the Department at least 5 days prior to a scheduled
hearing date.

10 THEREFORE, IT IS ORDERED, that the two above named Respondents appear
11 before the New Hampshire Banking Department on **Tuesday, September 2, 2008 at**
12 **10:00 am at the New Hampshire Banking Department, 53 Regional Drive, Suite**
13 **200, Concord, NH 03301**, for the purpose of participating in an adjudicative
14 proceeding, at which time each Respondent will have the opportunity to show
15 cause as to why relief sought in the Order to Show Cause should not become
16 permanent; and

17 IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Staff Attorney,
18 New Hampshire Banking Department, is designated as Hearings Counsel in this
19 matter with authority to represent the public interest within the scope of
20 the Department's authority. Hearing Counsel shall have the status of a party
21 to this proceeding;

22 IT IS FURTHER ORDERED, Presiding Officer Todd Wells shall issue a
23 RECOMMENDED DECISION in this matter which shall be reviewed and approved,
24 disapproved or modified by the Banking Commissioner; and

25 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
for identification only, and filed with the Department and provided to the
opposing party **on or before Friday, August 29, 2008**. Hearing Counsel shall
pre-mark the Department's exhibits with Arabic numbers. **Respondent shall**

1 **pre-mark exhibits with capital letters.** An index/list of exhibits providing
2 a brief description of each exhibit with its corresponding pre-marked number
3 or letter shall be filed by both parties simultaneous with the filing of
4 exhibits; and

5 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
6 exhibits and witnesses to be called at the hearing with a brief summary at
7 the hearing, and shall at the same time file a copy of their respective lists
8 with the Presiding Officer; and

9 IT IS FURTHER ORDERED, that all periods referenced in this notice shall
10 be calendar days. If the last day of the period so computed falls on a
11 Saturday, Sunday, or legal holiday, then the time period shall be extended to
12 include the first business day that is not a Saturday, Sunday, or legal
13 holiday; and

14 IT IS FURTHER ORDERED, that the Banking Department shall have the burden
15 of setting forth a *prima facie* case. Each Respondent shall have the burden of
16 showing compliance with applicable law by a preponderance of the evidence; and

17 IT IS FURTHER ORDERED, that Respondent's failure to appear at the time,
18 date, and place specified may result in the hearing being held *in absentia*
19 and/or default ruling in favor of the Complainant, without further notice or
20 opportunity to be heard; and

21 IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall
22 be recorded verbatim by the Department. Upon request of any party, or upon
23 the Presiding Officer's own initiative, such record shall be transcribed by a
24 certified court reporter designated by the Presiding Officer, and that all
25 costs shall be borne solely by the requesting party. Any such request shall
be submitted in writing to the Presiding Officer prior to hearing.

IT IS FURTHER ORDERED, that all documents shall be filed with the
Presiding Officer in the form of an original and one (1) copy and shall bear a

1 certification that a copy is being delivered to any other parties to this
2 matter in accordance with New Hampshire Code of Administrative Rules BAN
3 204.08 ("Filing Requirements"). All documents shall be filed by mailing or
4 delivering them to the New Hampshire Banking Department, ATTN: Todd Wells,
5 Presiding Officer, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by
6 facsimile or electronic transmission shall not be accepted; and

7 IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,
8 which shall include findings of fact and conclusions of law, separately
9 stated, no later than ten (10) days following conclusion of the hearing(s) in
10 this matter; and

11 IT IS FURTHER ORDERED, that routine procedural inquiries may be made by
12 telephoning Abigail Shaine, General Counsel for the New Hampshire Banking
13 Department, at (603)271-3561 or (603)228-9009, but all other communications
14 with the Presiding Officer and with the Department shall be in writing and
15 shall be filed as provided above. *Ex parte* communications are forbidden by
16 statute; and

17 IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be
18 mailed to Patrick E. Donovan, Esq., Counsel for David Cailloutte, Law Office
19 of Patrick E. Donovan, PLLC, Attorneys at Law, 23 Main Street, and Stephen R.
20 Delinsky, Esq., Counsel for Jean Duerr, Eckert Seamans Cherin & Mellott, LLC,
21 One International Place, 18th Floor, Boston, MA 02110, and to Presiding
22 Officer Todd Wells.

23 **SO ORDERED,**

24 /s/
Peter C. Hildreth
Commissioner
State of New Hampshire
Banking Department

8/29/08
Date